

INTRODUCED BY P. Colao INTRODUCTION January 15, 2019
SECONDED BY D. Spoto HEARING February 5, 2019
ADOPTION _____

**BOROUGH OF CLIFFSIDE PARK
COUNTY OF BERGEN, STATE OF NEW JERSEY**

ORDINANCE 2019-02

ORDINANCE AMENDING CHAPTER 11: RENT CONTROL

11-2 RENT CONTROL ORDINANCE

ARTICLE I. Terminology

11-2.1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

- a. DWELLING — Any building or structure or trailer or land being used as a trailer park, rented or offered for rent, to one or more tenants or family units. Exempted from this section are public housing and dwelling space in any motel, hotel or any other premises primarily serving transient guests and similar type buildings in which at least one-third of the occupied floor space is commercial and dwelling places of three units or less. Housing units of three families in which one of the units is owner-occupied shall also be exempt. In any multiple unit structure containing three or more dwelling units, wherein a minimum of three dwelling units are rented by tenants, and are not owner-occupied, such rented dwelling units shall be subject to the rent control regulations of the borough. Housing units newly constructed and rented for the first time are exempt and the initial rent may be determined by the landlord and thereafter all subsequent rents shall be subject to the provisions of this section.
- b. HOUSING SPACE — That portion of a dwelling, rented or offered for rent for living or dwelling purposes to one individual or family unit, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such portion of the property.
- c. INDEX — The consumer price index (all items) for the region of the United States of which Cliffside Park, New Jersey, is a part, published periodically by the Bureau of Labor Statistics, United States Department of Labor.
- d. LANDLORD — The person who owns, purports to own or exercises control of any dwelling.
- e. PERIODIC TENANT — Any month-to-month tenant or any tenant at will, or sufferance, or any tenant having a lease for a term of less than one year.
- f. RENT — The amount of consideration including any bonus, benefit or gratuity demanded or received by virtue of any agreement between the parties whereby upon the payment of a sum certain by the one party (hereinafter "tenant"), the other (hereinafter "landlord") allows to him the peaceful and quiet enjoyment of the use and occupation of the unit of housing space for that time period. If the parties agree that rent is to be paid upon some interval other than one month, then that shall be construed as an alternative method of payment and the monthly rent shall be calculated by apportioning the rent so as to determine the sum due for the term of one month. Where the parties have covenanted to provide for increments during the term of their agreement, such increments shall not be averaged up as an alternative method of payment calculation.
- g. SURCHARGE — Any allowable payment not included in base rent.

ARTICLE II. Rent Increase Calculations

11-2.2 Rental increases.

- A. Subject to the provisions of vacancy decontrol set forth in 11-2.4, allowable rent increases for all other rental units falling within the Borough's rent leveling ordinances shall be determined as set forth herein.
- B. At the expiration of a period of not less than 12 consecutive calendar months following the effective date of the last rental increase, a landlord may receive an increase in the rent

for such rental unit not to exceed 5% of the prior base rent, subject to Subsection C below.

- C. The maximum allowable annual rent increase that a landlord may charge a qualified senior citizen or disabled person shall be 3% of the prior base rent. The definition that shall be used to determine qualification by a senior citizen or disabled person is the definition utilized to determine protected tenancy status pursuant to the Senior Citizens and Disabled Protected Tenancy Act (N.J.S.A. 2A:18-61.22 et seq.).
- D. The Borough's Rent Leveling Administrator is hereby empowered with the authority to hear and determine all applications for qualification as a senior citizen or disabled person.
- E. Any rent increase other than as provided in this chapter shall be void.

11-2.3 Excessive rental void.

Any rental charge in excess of that authorized by the provisions of this chapter shall be void.

11-2.4 Vacancy decontrol.

Any rental which is rented for the first time or shall become vacant for any reason whatsoever, shall be decontrolled. Upon the re-rental of such rental unit, it shall become subject to the provisions of this section. This provision has been included to encourage improvements in rented dwelling units.

11-2.5 Multiple-year lease.

Nothing herein shall be construed as preventing a landlord and a tenant from entering into a lease for a period in excess of one year. A multiple-year lease may provide for an increase in a subsequent calendar year; provided, however, that any subsequent rental increases shall not exceed 5% for the subsequent calendar year for which an increase is provided.

11-2.6 Provisions not to be misconstrued.

The provisions of the Multiple-year lease section are hereby declared to be solely for furthering the orderly administration of this chapter and shall not be construed as affecting or conditioning any rights or duties of landlords or tenants hereunder.

11-2.7 Rent increase notification.

Any landlord seeking a rent increase shall notify the tenant by certified mail, personal service and/or any other way provided by law.

11-2.8 Invalidity; determination.

If Articles II through VI shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, then the establishment of rents between a landlord and a tenant shall be determined by the provisions of this section. At the expiration of a lease or at the termination of the lease of a tenant, no landlord may request or receive a percentage increase in rent for any housing space which is greater than the percentage difference between the index three months prior to the expiration or termination of the lease and the index at the date the last previous lease term commenced. For a periodic tenant whose lease term shall be less than one year, said tenant shall not suffer or be caused to pay any rent increase in any calendar year which exceeds the average index percentage differential for the calendar year prior thereto.

ARTICLE III. Applications to Board

11-2.9 Application for increase by landlord or relief by tenant.

- A. A landlord may apply to the Rent Leveling Board (hereinafter "Board") for an increase in rent in excess of that permitted in Article II hereof upon a showing that:
 - 1. The increases permitted in Article II hereof will not yield a rental such that the landlord will earn a fair and reasonable return pursuant to 11-2.13; or
- B. A tenant may file a complaint with the Board for:
 - 1. Relief declaring a rental increase void on grounds that it exceeds the maximum allowable rent increase permitted under this chapter;
- C. In determining whether to grant the relief provided for under this section, it shall be the landlord's burden to demonstrate, by a preponderance of the evidence, that:

1. Where an application is filed pursuant to 11-2.9A, the landlord is entitled to relief for the reasons provided for in this section; and
2. Where a complaint is filed pursuant to 11-2.9B, the tenant is not entitled to relief for the reasons provided for in this section.

11-2.10 Notice of application.

Prior to filing an application pursuant to 11-2.9;

- A. A landlord-applicant shall notify the tenant by certified mail or by personal service (provided a receipt is obtained from the tenant or an affidavit of service is sworn to), which notice shall include, but not be limited to, the amount of increase applied for, if possible, and a statement that all documentation filed with the Board shall be available for inspection at the office of the Board.
- B. A tenant-applicant shall notify the landlord by certified mail or by personal service (provided a receipt is obtained from the landlord or an affidavit of service is sworn to) of his or her intent to file an application pursuant to 11-2.9 and, generally, the reason(s) the tenant is seeking a reduction.
- C. Proof of notice shall be filed along with any application to the Board. No application will be acted upon unless such proof is provided.

11-2.11 Notice of hearing.

- A. Immediately upon receipt of an application and proof of notice, the Board shall notify the tenant(s) and landlord of the scheduled hearing date.
- B. If the subject of the application is an increase pursuant to 11-2.9A(1), the landlord, upon receipt of the hearing date, shall post notice thereof in conspicuous locations within the premises, including but not limited to the mail rooms, lobbies, elevators and/or laundry rooms.

11-2.12 Determination by Board; unreasonable delay.

- A. For purposes of 11-2.9A(1), the year of application shall be the calendar or fiscal year immediately succeeding the calendar or fiscal year last utilized by the landlord in maintaining his books and records, and it shall be the period of operation upon which the Board shall base its determination.
- B. Except as provided below, no increase in rent may be collected by a landlord and no decrease in rent may be withheld by a tenant, where such increase or decrease, as the case may be, is the subject of an application, until granted by the Board. The Board shall not unreasonably delay the rendering of its determination of any application.
- C. For purposes of 11-2.9A(1), in the event the Board does not render a determination within four months of the filing of the landlord's application, 1/2 of the increased rentals sought shall, at the discretion of the landlord, be collected in accordance with this chapter and shall be subject to retroactive adjustment by the Board upon its determination. Such four-month period may be extended by written consent of the landlord. In the event the Board concludes that its delay in rendering a decision is caused by the landlord, the landlord shall be prohibited from commencing any collection of increased rentals sought until the Board renders its determination.

11-2.13 Increase granted; percentage calculated.

A landlord shall be entitled to an increase in rent under this section if said landlord is being deprived of earning a fair and reasonable return on his actual investment.

- A. The Board shall make a determination regarding the landlord's investment in the subject premises and a fair return thereon. In computing the income necessary to achieve a fair return, the Board shall allow reasonable operating expenses, considering their useful life and debt service.
 1. The "useful life of an expense item" shall be defined as that number of years reasonably expected to pass before that same expense will again be incurred. The past history of the building, where applicable, shall be used as a guideline in determining useful life. Where the useful life of an expense item exceeds one year, such expense shall be prorated over the entire useful life of the expense item. When relief has been granted for an expense item having a useful life in excess of one year, and having a cost equal to a greater than 1% of the then-current roll, such increase shall be treated as a surcharge on the tenant's rent only for the period of the useful life of the expense

- item and shall thereafter terminate unless the same expense recurs. The surcharge shall not be part of the base rent. At the time of such recurrence, the newly calculated prorated expense may be added to the rent as a new surcharge as determined by the Rent Leveling Board over its then determined useful life.
2. Debt service shall include interest, principal reduction and mortgage insurance premium, where applicable. In the event there has been a refinancing of prior mortgages, the Board shall review actual disposition of the proceeds of the refinancing as a part of its determination of investment and debt service. Depreciation is specifically excluded as an allowable expense. Real estate tax increases directly attributable to conversions of premises to a condominium or cooperative are specifically excluded as an allowable expense. The "landlord's investment" is hereby defined as the original cash investment at the time of purchase, less any withdrawals at the time of refinancing or at any other time. No inflation factor may be applied to such investment.
- B. The Board shall use actual expenses for the period of relief insofar as it is known at the time of the filing of the application for relief. Where such actual costs are unknown, the Board shall project said unknown costs in accordance with the following formula:
1. The actual costs for the calendar or fiscal year of the landlord prior to the date of filing of the application for relief shall be multiplied by the Percentage Inflation Factor (PIF) which shall yield the allowable operating expense. The "PIF" is defined as the percentage change of the New York/Northeastern New Jersey Consumer Price Index available for the latest 12 consecutive months available at the time of filing of the application for relief.
- C. As a part of the application for relief, a landlord shall submit to the Board its anticipated income for the period of relief, considering all automatic increases to base rent that may come due during said period. Anticipated income shall include, but not be limited to, income from residential rents, garage rents, additional facilities and laundry and vending commissions.
- D. The Board shall deny all or a part of the relief requested where specific findings of fact support the conclusion that the landlord purchased the subject premises for an excessive price. Excessive purchase price is hereby defined as the purchase price such that at the time of purchase a reasonable investor could not expect to earn a fair return upon his investment.
- E. The relief granted shall increase the actual income yielded by the subject premises to that income necessary to enable the landlord to earn a fair return upon his actual investment.
- F. Wherever practicable, the Board shall require of the applicant professionally certified documentation of all pertinent financial data offered in support of an application under this section, except that the Board may exercise its reasonable discretion to waive this requirement if the cost to the applicant is deemed to outweigh the need for professional certification.
- G. On all applications subsequent to a conversion, the Board shall singularly analyze each item of alleged increased expenses and disregard and disallow any items attributable to said conversion.
- H. Any increase granted under this section shall be in lieu of and not in addition to any increase granted under Article II.
- I. No increase granted pursuant to this section shall take effect until the Borough's construction official or designated representative, after a reasonable inspection of the premises, notifies the Board in writing that said premises is in substantial compliance with the Borough's maintenance code and State Uniform Construction Code.
- J. No increase granted pursuant to this section shall take effect until the Borough's Tax Collector notifies the Board in writing that all property taxes are current, except for arrearages authorized by law, and any tax rebates due have been paid.

11-2.14 Exception; expense ratio a factor.

Notwithstanding anything to the contrary herein, no landlord shall be entitled to a percentage increase greater than that permitted under Article II hereof unless the average expense ratio of the landlord for the three years preceding the year immediately preceding the year of application is less than the expense ratio for the year immediately preceding the year of application. The expense ratio means reasonable and necessary operating expenses, as defined in 11-2.13 hereof, divided by total income.

11-2.15 Landlord to file statement of operations.

- A. As soon as available, but not later than six months from the date of the filing of an application for increased rental, the landlord shall file with the Board a statement of operations setting forth its actual costs for the first six months of the year of application.
- B. In the event the landlord provides the Board with its actual cost expense reflecting the first six months of the year of application, the Board may dispense with the review as provided for in this section.
- C. The Board shall review the statement of operations, may hold public hearings and/or require the filing of additional data. Within two months of receipt of the statement of operations, the Board shall make such adjustments to the relief granted as is manifested by the actual six month cost experience. The Board is not required to make any adjustments in the relief in the event that the actual six-month cost experience does not significantly differ from the reasonable and necessary operating expenses as determined by the Board heretofore. In the event the Board shall fail to make an adjustment within the two-month period, the original relief granted shall become final. In the event the landlord shall fail to file the statement of operations within the six-month period, the relief granted shall automatically terminate and base rent shall revert to the base rents in effect prior to the date of application. For good cause shown, the Board may extend the six-month filing period for an additional period not to exceed three months. Simultaneously with the filing of the statement of operations, the landlord shall notify the affected tenants of the filing. Notwithstanding anything contained in this section, the initial determination of the Board shall be deemed final for purposes of appeal.
- D. Any increased or adjusted rental granted pursuant to 11-2.13 and this section shall be subject to further and retroactive adjustment subsequent to distribution from an escrow fund established.

11-2.16 Board to grant one increase in any one year.

The Board shall not grant an increased rental to a landlord upon more than one application for any one year.

11-2.17 Notice forms.

From time to time, the Board may promulgate forms to be utilized whenever notice is required and may adopt such rules and regulations as are necessary to implement the intent of this article.

11-2.18 Applicant to establish escrow account.

- A. Upon submission of an application, and in addition to any fees established in 11-2.27 hereof, the applicant shall be required to establish an escrow account with the Borough.
- B. Upon receipt of an application for relief, the Board shall forthwith send a copy thereof to any professional experts retained to assist The Board in the processing of the application. Within five days of receipt, the professional experts shall submit to the Board an estimate of funds sufficient in amount to undertake the professional services to be rendered.
- C. The applicant shall forthwith deposit such funds in the escrow account maintained by the Tax Collector of the Borough. The professional experts shall submit vouchers for all reasonable and necessary fees for the professional services rendered, which fees shall be paid from the escrow account in the manner prescribed by N.J.S.A. 40A:5-16 through 40A:5-18.
- D. The professional expert shall, at the time of submission of any such voucher, forward a copy of same to the applicant. In the event that the applicant questions the reasonableness of any such voucher, the applicant shall, not later than five days after receipt of a copy of the voucher, make written protest of such voucher to the Board. In no event shall the Board authorize the payment of any voucher submitted pursuant to this section sooner than 10 days from its submission.
- E. Any of the aforesaid moneys left in the escrow account upon completion of the application shall be returned to the applicant as soon as is practicably possible.
- F. Should additional funds be required after the original funds are exhausted, such funds shall be necessary, in the judgment of the Board, shall be paid by the applicant to the Tax Collector of the Borough and placed in the escrow account.
- G. The Board shall take no formal action on any application unless and until all escrow funds have been deposited with the Tax Collector of the Borough and any time limitations set forth in this chapter shall

11-2.19 Tenant to be notified of application for relief.

No relief shall be effective as to any new or renewal tenancy relationship entered into after the effective date of this chapter unless the landlord, as part of a lease, has provided written and conspicuous notice of the pendency or possibility of any application for relief and for the six-month review provided for in 11-2.15 hereof, which notice shall be separately signed by the tenant. In the event of an oral lease, the landlord, at the time of the creation or renewal of the tenancy relationship, shall provide written actual notice of the aforesaid.

11-2.20 Lease to expire; tenant has grace period.

Where a lease is due to expire within 60 days from the granting of any relief by the Board pursuant to 11-2.13, the tenant shall have the right to remain in possession, without renewing the lease for a period not to exceed 90 days following the date of receipt of the Board's determination. The tenant shall pay the increased rentals granted by the Board until the premises are vacated.

ARTICLE IV. Board Construction; Powers and Duties

11-2.21 Board continued.

The Rent Leveling Board as heretofore constituted is hereby continued. The members currently serving on the Board may continue to do so until their term expires and until their successors shall have qualified.

11-2.22 Members appointed; term.

The Board shall consist of five members appointed by the Mayor with the advice and consent of the Council, all of whom shall serve without compensation and reside in the Borough. Their terms of office shall be one year. Three alternate members may be appointed by the Mayor with the advice and consent of the Council, to serve in the absence of or due to the disability of any of the regular members of the Rent Control Board. Alternate members shall serve at the discretion of the Mayor and Council. The term of office shall commence on the date of passage of this subsection and continue until the first council meeting of the succeeding year at which time alternate members may be appointed for a period of one year unless sooner removed due to disability or by termination by the Governing Body. d

11-2.23 Powers and duties.

- A. The Board is hereby granted, and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the following:
1. To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended from time to time by the Board in the exercise of its discretion, provided that such rules and regulations are approved, modified or disapproved by resolution of the Mayor and Council, which resolution approving, modifying or disapproving such rules and regulations shall be adopted by the Mayor and Council within 90 days from receipt thereof. In the event the Mayor and Council fail to adopt said resolution within 90 days, the rules and regulations shall be deemed to be approved by the Mayor and Council in the form submitted.
 2. To supply information and assistance to landlords and tenants to help them comply with the provisions of this chapter.
 3. To hold hearings and adjudicate applications from tenants for reduced rental as provided herein.
 4. To enforce the provisions of this chapter and to initiate proceedings in the municipal court of willful violations thereof.
 5. To issue subpoenas to compel the attendance of witnesses and the production of books and records in connection with hearings held pursuant to the provisions of this chapter.
- B. The Board shall give both landlord and tenant reasonable opportunity to be heard before making any determination.

11-2.24 Appeals to governing body.

- A. Any determination of the Board may be appealed by an affected landlord or tenant to the governing body. The appeal shall be made in writing and filed with the Borough Clerk within 20 days from the receipt of the Board's determination and shall set forth the specific basis for the appeal. The appellant shall deliver a copy of the notice of appeal by certified mail or personal service to each affected party.
- B. The governing body may thereafter hold a hearing on the appeal, which hearing shall be de novo unless a transcript or stipulation of facts is supplied. In the event the governing body does not hold a hearing on the appeal within 60 days of the filing of the appeal, the determination of the Board shall be deemed affirmed.

ARTICLE V. Responsibilities of Landlord

11-2.25 Maintain standards.

- A. During the term of this chapter, the landlord shall maintain the same standards of service, maintenance, furniture, furnishings and equipment in the housing space and dwelling as he provided or was required to do by law or lease on the date the lease was entered into. Any violation hereof shall subject the landlord to punishment under 11-2.28 hereunder.
- B. Anti-harassment provisions.
 1. Any conduct, direct or indirect, committed by a landlord, or anyone on his behalf, which results in the harassment of a tenant, including but not limited to a reduction of services, bothersome telephone calls or letters, bellringing, frivolous eviction threats or legal proceedings, shall be unlawful and shall constitute a violation of this chapter. A complaint for this violation can be brought in the Cliffside Park Municipal Court and must be filed within 90 days of the alleged act of harassment.
 2. Upon a finding that a landlord was guilty of harassment under this section, the Court shall impose a fine of up to \$2,000 per act of harassment with a minimum mandatory fine of \$150 for a first offense; \$300 for a second offense; and \$500 for each subsequent offense. Each day or part thereof of such harassment shall constitute a separate offense for the purposes of this section. In addition, the Court may impose any one or more or parts of the following penalties:
 - a. A forfeiture of prospective rent increases on the unit in question for a period of three years.
 - b. Reimbursement to the aforesaid affected tenant of up to six months rent.

11-2.26 Increases must be authorized.

No landlord shall after the effective date of this chapter charge any rents in excess of what was received before the effective date of this chapter except for increases as authorized by this chapter.

ARTICLE VI. Miscellaneous Provisions

11-2.27 Schedule of fees.

There is hereby established the following Schedule of Fees for complaints and applications to the Board, which fees shall be payable to the Tax Collector of the Borough.

Type of Complaint or Application	Fee
Complaint filing fee	\$100.00
Landlord's application for increased rental due to capital Improvement	\$100.00
Landlord's application for hardship relief	\$100.00

11-2.28 Violations and penalties.

A violation of any provision of this chapter, including but not limited to the filing with the Rent Leveling Board of any misstatement of fact, shall be punishable by a fine of not more than \$200 and imprisonment for not more than 30 days, or both. A violation affecting more than one leasehold shall be considered a separate violation as to each leasehold.

11-2.29 Construal of provisions.

This chapter, being necessary for the welfare of the Borough and its inhabitants, shall be liberally construed to effectuate the purposes thereof.

11-2.30 Appointment of attorney.

The Mayor and Council reserve and retain the right to annually appoint an attorney to represent the Rent Leveling Board and set his or her salary.

ARTICLE VII. Applications for Reduced Rent Increase Percentages

11-2.31 Qualification for eligibility for senior citizen and disabled person status.

- A. All persons seeking to qualify as senior citizen or disabled person shall complete application forms provided by the Rent Board.
- B. The determination as to eligibility shall be made by the administrator of the Rent Leveling Board and is appealable to the Rent Leveling Board within 20 days. The decision of the Rent Leveling Board shall be final.
- C. Hearings by the Rent Leveling Board on such appeals shall be held in closed session, with only the affected landlord and tenant and their agents in attendance. All data utilized at such hearing shall be held in strict confidence at the request of the tenant.
- D. Once a tenant obtains initial eligibility, said tenant must certify at the expiration of every two years thereafter as to his/her continued eligibility. Such certification forms shall be provided by the Rent Leveling Board.
- E. Said certification must be completed by an eligible tenant not less than three months prior to lease renewal or annual rent increase.
- F. For good cause shown, a landlord may apply to the Rent Leveling Board for a hearing on the question of a tenant's eligibility at the anniversary date of such tenant's eligibility after the initial two-year period of eligibility.

11-2.32 Cap on rent increases for eligible senior citizens and disabled persons.

Annual rent increases for qualified senior citizens and disabled persons shall not exceed 3%.

11-2.33 Vacation of a unit of a senior citizen or disabled tenant.

Upon vacation of a unit of a senior citizen or disabled tenant, the unit becomes decontrolled.

11-2.34 Administrative agent.

The administrator of the Rent Leveling Board shall serve as the administrative agent for the Borough of Cliffside Park to administer the Senior Citizens and Disabled Protected Tenancy Act.

11-2.35 Conversion fee.

The landlord/sponsor of each rental unit converted to a condominium or cooperative after the effective date of the Senior Citizens and Disabled Tenancy Act shall provide sufficient postage and forms for certified mailings and pay fees in accordance with the schedule listed herein.

- A. Initial filing fee, building or project.
 - 1. Less than 50 units: \$125.
 - 2. Less than 150 units: \$225.
 - 3. Less than 250 units: \$325.
 - 4. Two hundred fifty units or more: \$425.
- B. Application processing fee, initial and/or continued eligibility: \$35 per application.

11-2.36 Appeals Board.

- A. There is hereby established an Appeals Board, which Board shall hear and determine appeals from decisions rendered by the administrative agent under and pursuant to the Senior Citizens and Disabled Protected Tenancy Act.
- B. The Appeals Board shall be composed of three members of the Rent Leveling Board to be chosen by the Rent Leveling Board (a majority thereof concurring). Said persons shall serve without compensation. The terms of each member of the Appeals Board shall be for one year or until the end of the calendar year, whichever shall first occur.
- C. A filing fee of \$75 shall be paid by each appellant and said fee must be made at the time the appeal is filed.

INTRODUCED January 15, 2019

ADOPTED February 5, 2019

ATTEST:


Sercan Zoklu, Borough Clerk

APPROVED:


Thomas Calabrese, Mayor